



Virginia
Regulatory
Town Hall

Periodic Review and Retention of Existing Regulations Agency Background Document

Agency Name:	Virginia Department of Labor and Industry/ Safety and Health Codes Board
VAC Chapter Number:	16 VAC 25-140-10 et seq
Regulation Title:	Virginia Confined Space Standard for the Construction Industry
Action Title:	Periodic Review of Regulation Pursuant to Executive Order 25 (98)
Date:	July 17, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

16 VAC 25-140-10 et seq. applies to all employers with employees covered by the Virginia Standards for the Construction Industry (Part 1926). The regulation prescribes basic mandatory practices and procedures which employers must establish and use for employee entry into and work within confined spaces. The regulation requires atmospheric testing of confined spaces prior to entry, the use of personal protective equipment where necessary and requires ventilation of the space to prevent accumulation of toxic atmospheres.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

Section 40.1-22(5) of the Code of Virginia mandates the Safety and Health Codes Board adopt standards that most adequately assure that no employee will suffer material impairment of health or functional capacity and that the standards be as stringent as the standards promulgated by Federal OSHA. The Federal Occupational Safety and Health Administration does not have a comparable standard for construction, but does enforce confined space entry procedures through the use of the General Duty Clause of the OSHA Act and other construction standards that are considered vague and provide very little guidance to employers. While this standard exceeds current Federal standards for the construction industry, it does provide substantially similar safety and health protection as the required, mandated standards in general industry. The standard also provides construction employers with clearer guidelines for providing a safe workplace in the area of confined space entry.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No public comments were received on this regulation during the 30 day public comment period which began April 24, 2000. The agency and the Safety and Health Codes Board did not establish an informal advisory group for the purpose of assisting in the periodic review.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The regulation has three goals:

1. Reduce the incidence of material impairment of the health of Virginia workers due to workplace exposure to known hazards.
2. Provide protection to construction workers equal to that provided to workers in other industries.
3. Protect the public's health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of Commonwealth.

The primary goal of this regulation is to prevent injuries and deaths of construction industry employees that are required to enter confined spaces. Among other things, the standard requires atmospheric testing of confined spaces prior to entry, the use of personal protective equipment, where necessary and requires ventilation of the space to prevent accumulation of toxic atmospheres. The Department has set a target for inspecting the construction industry and will review compliance with this regulation and any reported injuries or fatalities as a result of non-compliance. Since promulgation of this regulation, there has been a consistent increase in compliance with these requirements and no deaths or serious injuries as a result of improper confined space entry.

There is no impact on the institution of the family and family stability. The regulation is clearly written and easily understandable.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

Alternatives considered were to eliminate the regulation and revert back to the Federal system of enforcement, which utilizes the General Duty Clause or retain the current regulation unchanged. The standard was originally subjected to the full Administrative Process Act notice and comment procedures when considered by the Safety and Health Codes Board., an independent entity composed of employers and employees of the regulated industries. During the previous Regulatory Review Process, the Department convened a group of independent employer and employee representatives from the regulated community to review the confined space regulations. This review panel considered all alternatives and recommended retention of the standard as originally adopted by the Safety and Health Codes Board.

During this regulatory review period the Federal Occupational Safety and Health Administration has begun the promulgation process for a construction Confined Space Entry Standard, but continues to enforce confined space entry through the General Duty Clause and other related construction standards. Elimination of the Virginia Confined Space Entry Standard for Construction would therefore not eliminate compliance requirements for employers, but would instead provide a regulatory system which is vague and provides very little guidance. Thus, this

regulation is the least burdensome alternative for the protection of employees working in confined spaces in the construction industry.

Recommendation

Please state that the agency is recommending that the regulation should stay in effect without change.

The Department of Labor and Industry and the Safety and Health Codes Board recommend retaining the regulation without change.

Family Impact Statement

Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.

This regulation has no impact on the institution of the family or family stability.